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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
10/613,792	07/03/2003	Alexander C. Chan	J6851(C)	7015	
201	7590 08/05/2005		EXAMINER		
	R INTELLECTUAL P	ELHILO, EISA B			
	700 SYLVAN AVENUE, BLDG C2 SOUTH		ART UNIT	PAPER NUMBER	
ENGLEWO	ENGLEWOOD CLIFFS, NJ 07632-3100			1751	
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Please find below and/or attached an Office communication concerning this application or proceeding.

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	Application No.	Applicant(s)	
	10/613,792	CHAN ET AL.	
Office Action Summary	Examiner	Art Unit	
	Eisa B. Elhilo	1751	
The MAILING DATE of this communication app Period for Reply	pears on the cover sheet with the c	orrespondence ad	dress
A SHORTENED STATUTORY PERIOD FOR REPL THE MAILING DATE OF THIS COMMUNICATION. - Extensions of time may be available under the provisions of 37 CFR 1.1 after SIX (6) MONTHS from the mailing date of this communication. - If the period for reply specified above is less than thirty (30) days, a repl - If NO period for reply is specified above, the maximum statutory period - Failure to reply within the set or extended period for reply will, by statute Any reply received by the Office later than three months after the mailin earned patent term adjustment. See 37 CFR 1.704(b).	36(a). In no event, however, may a reply be tin y within the statutory minimum of thirty (30) day will apply and will expire SIX (6) MONTHS from e, cause the application to become ABANDONE	nely filed s will be considered time the mailing date of this of (35 U.S.C. § 133).	
Status			
 Responsive to communication(s) filed on <u>03 Jac</u> This action is FINAL. 2b) This Since this application is in condition for allowated closed in accordance with the practice under <u>Backets</u> 	s action is non-final. nce except for formal matters, pro		e merits is
Disposition of Claims			•
4) ☐ Claim(s) 1-14 is/are pending in the application 4a) Of the above claim(s) is/are withdra 5) ☐ Claim(s) is/are allowed. 6) ☐ Claim(s) 1,3 and 5-14 is/are rejected. 7) ☐ Claim(s) 2 and 4 is/are objected to. 8) ☐ Claim(s) are subject to restriction and/or Application Papers 9) ☐ The specification is objected to by the Examine 10) ☐ The drawing(s) filed on is/are: a) ☐ accomplicant may not request that any objection to the Replacement drawing sheet(s) including the correct	wn from consideration. or election requirement. er. epted or b) objected to by the drawing(s) be held in abeyance. Ser	e 37 CFR 1.85(a).	PED 1 121/d\
11) The oath or declaration is objected to by the Ex		•	` .
Priority under 35 U.S.C. § 119			
12) Acknowledgment is made of a claim for foreign a) All b) Some * c) None of: 1. Certified copies of the priority document 2. Certified copies of the priority document 3. Copies of the certified copies of the priority application from the International Burear * See the attached detailed Office action for a list	es have been received. Es have been received in Application Thirty documents have been receive The second (PCT Rule 17.2(a)).	ion No ed in this National	l Stage
Attachment(s) 1) Notice of References Cited (PTO-892) 2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date \$\frac{9}{1/4/05 & 7/\infty3/03}\$.	4) Interview Summary Paper No(s)/Mail D 5) Notice of Informal F 6) Other:	ate	O-152)

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Claims 1-14 are pending in this application.

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 3, 6-7, 8 and 10-14 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-2, 9, 11-12 and 14-18 of copending Application No. 10/963332, claims 1-4, 5, 10, 11-12 and 14-17 of the copending Application No. 10/691,391 and claims 1-2, 4, 7-9, 11 and 14-19 of the copending Application No. 10/613864. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the copending Applications No. 10/963,332, 10/691,391 and 10/613,864 teach and disclose similar methods for coloring hair comprising carrying out similar sequential steps of contacting the hair with a dye mixture comprising a primary intermediates and couplers such as p-phenylenediamines as claimed in claim 1 (see claims 1-2 of the copending Application No. 10/963,332, claims 1-4 of the copending Application No. 10/791,391 and claims 1-2 of the copending Application No. 10/613,864), contacting the hair with a developer mixture as claimed in claim 1 (see claim 1 of

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the copending Application No. 10/963, 332, claim 1 of the copending Application No. 10/791,391 and claim 1 of the copending Application No. 10/613,864), the method wherein the primary intermediates and couplers are presented in the amounts of 0.1 to 10% as claimed in claim 3 (see claim 5 of the copending Application No. 10/791,391 and claim 4 of the copending Application No. 10/613,864), the method wherein further applying to the hair an aligning and distributing means after the hair has been contacted with the oxidative hair dye as claimed in claims 6-7 (see claims 11-12 of the copending Application No. 10/963,332, claims 11-12 of the copending Application No. 10/791,391 and claims 7-9 of the copending Application No. 10/613,864), the method wherein the developer mixture comprising an oxidizing agent peroxide as claimed in claim 8 (see claim 9 of the copending Application No. 10?963,332, claim 10 of the copending Application No. 10/791,391 and claim 11 of the copending Application No. 10/613,864). The claims copending Applications No. 10/963,332, 10/791,391 and 10/613,864 also teaches kits similar to those as claimed in claims 10-14 (see claims 14-18 of the copending Application No. 10/963,332, claims 13-17 of the copending Application No. 10/791, 391 and claims 14-19 of the copending Application No. 10/613,864). Therefore, this is an obvious formulation.

Although, the claims of the copending Applications No. 10/963,332, 10/791,391 and 10/613,864 teach and disclose similar hair dyeing methods, they are not identical to the instant claims, because the claims of the copending Application No. 10/963,332, require a fatty component of components having at least one fatty amine, claims of the copending Application No. 10/791,391, require that the rate of oxidation of hair dye precursors/rate of diffusion of hair dye precursors to be less than 1 and the claims of the copending Application No. 10/613864

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require a step of applying a means for aligning the hair, while the instant claims do not require these limitations limitation. Therefore, the conflicting claims are not identical.

However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize such a method for dyeing hair because the claims of the copending Applications No. 10/963,332, 10/791,391 and 10/613,864, teach and disclose similar method for dyeing hair wherein the oxidative dye mixture is applied to the hair first followed by application of the developing mixture as claimed, and, thus, a person of the ordinary skill would be motivated to utilize such a method for dyeing hair and would expect such a method to have similar properties and similar effect to the hair as those claimed, absent unexpected results.

This is a <u>provisional</u> obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

- 2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
 - (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 3, ,5, 8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sarojini et al. (US 2003/0154562 A1).

Sarojini et al (US' 562 A1) teaches a method for coloring hair comprising applying to the hair a mixture of oxidative dye precursors such as para-phenylenediamine followed by contacting the hair with a mixture of oxidizing agents as claimed in claim 1 (see page 10, claim 1 and page 5, paragraph, 0096), the method wherein the primary intermediates are presented in the

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amounts of 0.001 to 5% which overlapped with the claimed range as claimed in claim 3 (see page 2, paragraph, 0041), the method wherein the oxidizing mixture comprising hydrogen peroxide as claimed in claim 8 (see page 5, paragraph, 0096). Sarojini et al. (US' 562 A1) also teaches similar kit as claimed in claim 10 (see paragraph, 11, claim 17).

The instant claims differ from the reference by reciting that the pH of the solution to be selected based on the limitation that less that 50 % of the primary intermediate and couplers compounds are in their anionic form when they first contact the hair.

However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to be motivated to utilize a composition for dyeing hair having dyeing intermediate compounds with anionic form, because Sarojini et al. (US' 562 A1) teaches dyeing intermediates similar to those claimed (see page 4, paragraph, 0084), and thus a person of the ordinary skill in the art would expect such a method to have similar properties to those claimed, absent unexpected results.

4 Claims 6-7 and 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sarojini et al. (US 2003/0154562 A1) in view of Dias (US 6,540,791 B1)

The disclosure of Sarojini et al. (US' 562 A1) as described above, does not teach or disclose the aligning and distributing means as claimed.

Dias (US' 791 B1) in analogous art of hair dyeing formulation, teaches a method for dyeing hair comprising applying to the hair a distribution means such as comb and brush (see col. 49, lines 25-27)

Therefore, in view of teaching of the secondary reference, one having ordinary skill in the art at the time the invention was made to apply to the hair an aligning and distributing means

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such as brushes or combs with a reasonable expectation of success because Dias (US' 791) clearly teaches that the composition may be applied directly to the hair or via some vehicle such as brushes, combs or applicators (see col. 49, lines 25-27), and, thus, a person of the ordinary skill in the art would be motivated to apply such a vehicle as taught by Dias (US' 791 B1) in the method described be Sarojini et al. (US' 562 A1) and would expect such a method to have similar properties to those claimed, absent unexpected results.

Allowable Subject Matter

Claims 2 and 4 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art do not teach or disclose the claimed limitations.

Conclusion

The references listed on from 1449 have been reviewed by the examiner and are considered to be cumulative to or less material than the prior art references relied upon in the rejection above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B. Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -5:30) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Eisa Elhilo

Patent Examiner
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August 2, 2005